

The rules adopted by the Commission should require that extension requests be specific, focused, and limited in scope, demonstrate a clear path to full compliance, and specify all solutions considered or implemented prior to the applicable Commission-established benchmark or deadline and why those solutions proved unacceptable.⁸³ The rules should also specify that any such extension will only be as long as supported by the information provided in the carrier's request and the carrier's particular circumstances (*i.e.*, not necessarily the two-year maximum period permitted under Section 107(c)(3) of CALEA). Finally, the rules should state that while the Commission may consider the totality of the circumstances, including the carrier's compliance

⁸³ In order to confirm the genuineness of a carrier's compliance efforts and foster timely compliance, a carrier should be required to provide as part of its request for extension detailed information demonstrating proactive and timely consultation with the manufacturer(s) of its telecommunications transmission and switching equipment and its providers of telecommunications support services *for the purpose of ensuring* that current and planned equipment, facilities, and services comply with the capability requirements of CALEA Section 103 (including the dates of such consultations and the names and titles of the individuals with whom the carrier consulted). Such detailed information would include, at a minimum, (1) the date on which service design was initiated for a particular service offering, (2) efforts made at the service design stage demonstrating the carrier's effort to comply with the requirements of CALEA Section 103 for a the subject service offering; (3) details regarding the costs and other business burdens associated with CALEA compliance for the subject service offering; (4) technical challenges encountered by the carrier with respect to CALEA compliance for the subject service offering; and (5) a detailed discussion of how such costs, business burdens, technical challenges, etc. affected the carrier's timeline for full CALEA compliance for the subject service offering. A carrier should also be required to provide a signed statement from the manufacturer(s) of its telecommunications transmission and switching equipment and its providers of telecommunications support services corroborating the carrier's representations concerning consultation.

efforts, among the things that will not be considered justification for an additional extension are the failure of a standards-setting body to publish a standard, a vendor's failure to develop, build and/or deliver the solution by a benchmark date or deadline,⁸⁴ or a claim under Section 107(c)(2) that a solution is not reasonably achievable if made after the second interim benchmark deadline

VI. THE COMMISSION SHOULD ESTABLISH RULES TO PERMIT IT TO REQUEST INFORMATION REGARDING CALEA COMPLIANCE GENERALLY

As discussed herein, Section 229(a) authorizes the Commission to prescribe such rules as are necessary to implement the requirements of CALEA.⁸⁵ Furthermore, Section 218 of the Communications Act provides that the Commission "may inquire into the management of the business of all carriers subject to this Act" and "may obtain from such carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created."⁸⁶ It would be of substantial benefit to the Commission to be able to request information during applicable compliance periods regarding carriers' CALEA compliance efforts. Obtaining such information would enable the Commission to better assess the true

⁸⁴ Again, this is consistent with the Commission's approach in the E911 docket. See *E911 Fourth Memorandum Opinion and Order* at 17456 ¶ 38; *AT&T Waiver Order* at 18261 ¶ 26; *Nextel Waiver Order* at 18288 ¶ 36; *Cingular Waiver Order* at 18313 ¶ 27; *Sprint Waiver Order* at 18340 ¶ 32; *Verizon Waiver Order* at 18377 ¶ 35

⁸⁵ See 47 U.S.C. § 229(a).

⁸⁶ 47 U.S.C. § 218.

status of CALEA implementation, improve the Commission's understanding of CALEA compliance issues generally, monitor carriers' compliance efforts, promote the Commission's ability to evaluate individual extension petitions, and hopefully reduce extension request filings. Accordingly, Law Enforcement asks the Commission to adopt rules that permit the Commission to request, as needed or desirable, information regarding CALEA compliance generally. These rules would permit the Commission to request, for example, information regarding a carrier's general compliance status, a carrier's efforts to comply with its obligations under Section 106 of CALEA, the number of intercept orders provisioned by the carrier and the services on which such intercepts were provisioned, intercept provisioning cost information, and other information intended to assist the Commission in fulfilling its role in the implementation of CALEA.

VII. THE COMMISSION SHOULD ADOPT RULES THAT SPECIFICALLY OUTLINE THE TYPES OF ENFORCEMENT ACTIONS THAT MAY BE TAKEN AGAINST NON-COMPLIANT CARRIERS, MANUFACTURERS, AND SUPPORT SERVICE PROVIDERS

In addition to the lack of a specific, concrete CALEA compliance plan, another factor that has contributed to problems and delays in the CALEA implementation process is the lack of Commission enforcement against non-compliant carriers, manufacturers, and support service providers. Accordingly, Law Enforcement asks that the Commission establish rules that specifically outline the types of enforcement action that may be taken against carriers and/or equipment manufacturers and support service providers that fail to comply with their general CALEA obligations or any

phased-in CALEA implementation plan adopted by the Commission.⁸⁷ Otherwise, carriers, manufacturers, and support service providers may violate Commission-established CALEA compliance deadlines with impunity.⁸⁸

As discussed herein, Section 229(a) of the Communications Act gives the Commission very broad authority to implement CALEA.⁸⁹ In terms of implementing CALEA compliance benchmarks and deadlines, the Commission is required by Section 107(c) of CALEA, in conjunction with Sections 229(a) and (d) of the Communications Act, to rule on requests for extensions of time, impose new compliance deadlines where needed, and enforce those compliance deadlines. The FBI's role in the Section 107(c) process (as delegated to it by the USDOJ) is limited to "consultation."⁹⁰ Thus, the Commission is the appropriate agency to enforce any CALEA compliance benchmarks and/or deadlines, as well as CALEA compliance generally.⁹¹ Indeed, Law Enforcement

⁸⁷ For example, a violation of the plan might consist of an untimely benchmark filing or a benchmark filing that fails to make the required showing

⁸⁸ In the E911 docket, the Commission indicated its willingness to take enforcement action against non-compliant carriers and manufacturers for violations of the E911 compliance benchmarks and deadlines as well as the formal E911 rules. *See AT&T Waiver Order* at 18261 ¶ 25, *Nextel Waiver Order* at 18288 ¶ 35; *Cingular Waiver Order* at 18313 ¶ 26; *Sprint Waiver Order* at 18340 ¶ 31; *Verizon Waiver Order* at 18377 ¶ 34. The Commission has yet to take such action with respect CALEA. Accordingly, formal rules are needed to ensure that CALEA is adequately enforced

⁸⁹ *See* 47 U.S.C. § 229(a)

⁹⁰ *See* 47 U.S.C. § 1006(c).

⁹¹ Although Section 108 of CALEA delegates enforcement power to the Department of Justice, *see* 47 U.S.C. § 1007, that statutory provision is not tied to Section 107 of CALEA. Moreover, the provision is subject to certain limitations, including "not

is not aware of any instance where the Commission has the express statutory authority to impose a compliance deadline yet lacks the authority to enforce it. Commission enforcement is especially critical in connection with the CALEA packet-mode phase-in plan discussed above, because that plan relies on the truthfulness of carrier and manufacturer representations to ensure compliance. For example, when carriers and manufacturers certify to the Commission that an intercept solution has been built, the Commission would rely on the accuracy of the certifications as opposed to other means of verification, such as field testing. Thus, only the Commission can take enforcement action against material misrepresentations made by these carriers and manufacturers in their compliance benchmark and deadline filings.

The establishment of Commission rules to enforce both CALEA implementation benchmarks and deadlines and general CALEA compliance is consistent with the Commission's enforcement of other public safety implementation mandates, such as E911. In its *Fourth Memorandum Opinion and Order* in the E911 docket, the Commission stated that in light of the importance of the E911 mandate to public safety, the Commission was prepared to take any steps necessary to ensure that a carrier takes its obligation seriously, including assessing penalties for failure to comply with the E911

reasonably achievable" showings, that render it far less reliable than a standard Commission notice of apparent liability. See 47 U.S.C. § 1007(c)(2).

mandate⁹² Additionally, in a series of waiver orders issued in the E911 docket — wherein the Commission granted several carriers individual extensions of E911 implementation deadlines and approved their respective phased-in deployment proposals — the Commission specifically advised the carriers that they were required to comply with each individual condition of grant, including the reporting requirements.⁹³ The Commission further advised that each specific benchmark and Quarterly Report was considered to be a separate condition of the carrier's plan.⁹⁴ The Commission also specifically admonished the carriers that if they did not achieve compliance by the dates specified in the extension grants, the carriers would be deemed non-compliant and would be referred to the Commission's Enforcement Bureau for possible enforcement action, including but not limited to revocation of the relief granted, a requirement to deploy an alternative technology to achieve compliance, letters of admonishment, and/or monetary forfeitures.⁹⁵ The Commission added that the conditions imposed as part of the grant of relief have the same force and effect as a Commission rule itself⁹⁶

⁹² See *E911 Fourth Memorandum Opinion and Order* at 17458 ¶ 45

⁹³ See *AT&T Waiver Order* at 18261 ¶ 25, *Nextel Waiver Order* at 18288 ¶ 35, *Cingular Waiver Order* at 18313 ¶ 26, *Sprint Waiver Order* at 18340 ¶ 31; *Verizon Waiver Order* at 18377 ¶ 36.

⁹⁴ *Id*

⁹⁵ See *AT&T Waiver Order* at 18261-2 ¶ 25-26; *Nextel Waiver Order* at 18288-9 ¶ 35-36; *Cingular Waiver Order* at 18313-4 ¶ 26-27; *Sprint Waiver Order* at 18340-1 ¶ 31-32; *Verizon Waiver Order* at 18377-8 ¶ 34-35. In a recent order, the Commission affirmed its conclusions in these waiver orders with respect to the enforcement of compliance plans or deployment schedules. See *In the Matter of Revision of the Commission's Rules to*

In the wake of the above-referenced E911 waiver orders, the Commission followed through on its threat of enforcement. It referred violations of the E911 extension grants to the Enforcement Bureau,⁹⁷ and the Enforcement Bureau responded by issuing notices of apparent liability⁹⁸ and imposing monetary penalties on carriers.⁹⁹

Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Petitions for Reconsideration of Phase II Waivers and Compliance Plans of Cingular Wireless, Nextel, and Verizon Wireless, Petitions for Reconsideration of Phase II Compliance Deadlines for Non-Nationwide CMRS Carriers of Alltel and Dobson, Order, 18 FCC Rcd 21,838 (2003).

⁹⁶ See *AT&T Waiver Order* at 18261 ¶ 25; *Nextel Waiver Order* at 18288 ¶ 35; *Cingular Waiver Order* at 18313 ¶ 26; *Sprint Waiver Order* at 18340 ¶ 31; *Verizon Waiver Order* at 18377 ¶ 34.

⁹⁷ See, e.g., *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Cingular Wireless LLC Petition for Reconsideration, Order*, 17 FCC Rcd 24910-11 ¶ 3 (2002); *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; T-Mobile USA, Inc. Amended Request for Limited Modification of E911 Phase II Implementation Plan, Order*, 17 FCC Rcd 24908-09 ¶ 4 (2002); *In the Matter of 911 Call Processing Modes; Motorola Request for Expedited Relief For Phase II-Enabled Handsets, Order*, 17 FCC Rcd 19,267, 19,268-69 ¶ 6 (2003).

⁹⁸ See, e.g., *AT&T Wireless, Inc. Washington, DC, Notice of Apparent Liability for Forfeiture*, 17 FCC Rcd 9903 (2002), *In the Matter of T-Mobile USA, Inc., Notice of Apparent Liability for Forfeiture*, 18 FCC Rcd 3501 (2003).

⁹⁹ See, e.g., *AT&T Wireless, Inc. Washington, DC, Order and Consent Decree*, 17 FCC Rcd 19938 (2002), *In the Matter of T-Mobile USA, Inc., Order and Consent Decree*, 18 FCC Rcd. 15,123 (2003), *In the Matter of Cingular Wireless LLC, Order and Consent Decree*, 18 FCC Rcd 11746 (2003); *In the Matter of AT&T Wireless Services, Inc., Order and Consent Decree*, 17 FCC Rcd 11510 (2002). Pursuant to their consent decrees, AT&T Wireless Washington DC, T-Mobile, Cingular Wireless, and AT&T Wireless Services each agreed to adhere to strict compliance benchmarks and reporting requirements; (2) make voluntary contributions of \$2,000,000, \$1,100,000, \$675,000, and \$100,000 (respectively) to the United States Treasury, and (3) make voluntary contributions, in the event of a failure to comply with the benchmarks, ranging from \$300,000 to \$450,000 for the first missed benchmark, \$600,000 to \$900,000 for the second missed benchmark, and \$1,200,000 to \$1,800,000 for the third missed benchmark and any subsequently missed benchmarks. *Id.*

Carriers subject to Commission enforcement of E911 deadlines showed significant progress in their E911 compliance. Commission enforcement of CALEA benchmarks and deadlines would likely produce similar positive results for CALEA.¹⁰⁰

VIII. THE COMMISSION SHOULD ESTABLISH RULES CONCERNING RESPONSIBILITY FOR CALEA IMPLEMENTATION COSTS FOR POST-JANUARY 1, 1995 EQUIPMENT, FACILITIES, AND SERVICES CALEA COST RECOVERY, AND CALEA INTERCEPT PROVISIONING COSTS

There continues to be dispute concerning who bears financial responsibility for various costs associated with CALEA implementation. Accordingly, Law Enforcement asks that the Commission establish rules that (1) confirm that carriers bear the sole financial responsibility for development and implementation of CALEA solutions for post-January 1, 1995 communications equipment, facilities, and services, (2) permit carriers to recover from their customers the costs of developing and implementing CALEA intercept solutions in post-January 1, 1995 equipment, facilities, and services; and (3) clarify the methodology for determining carrier CALEA intercept provisioning costs and who bears financial responsibility for such costs.

¹⁰⁰ Enforcement action could include, among other things, financial penalties, remediation measures, imposition of additional carrier-specific deadlines and reporting requirements.

A. The Commission Should Confirm That Carriers Bear the Cost of Implementing CALEA Solutions for Post-January 1, 1995 Equipment, Facilities, and Services

CALEA clearly places the CALEA solution implementation costs for post-January 1, 1995 communications equipment, facilities, and services on carriers, not law enforcement.¹⁰¹ Notwithstanding the statutory language in CALEA and the Commission's pronouncements on the subject,¹⁰² carriers continue to express uncertainty concerning who bears responsibility for CALEA implementation costs for post-January 1, 1995 communications equipment, facilities, and services. Accordingly, Law Enforcement asks the Commission to exercise its authority under Section 229(a) of the Communications Act to establish rules specifically stating that, unless otherwise specified by the Commission in the context of a carrier-specific Section 109(b) petition, carriers bear sole financial responsibility for CALEA implementation costs for post-January 1, 1995 communications equipment, facilities, and services.

B. The Commission Should Establish Rules Permitting Carriers to Recover Their CALEA Implementation Costs from Their Customers

Carriers are required to comply with CALEA, and CALEA clearly places the CALEA solution implementation costs for post-January 1, 1995 communications equipment, facilities, and services on carriers.¹⁰³ Notwithstanding a statutory obligation

¹⁰¹ See 47 U.S.C. § 109(b)

¹⁰² See, e.g., *CALEA Second Report and Order* at 7129 ¶ 40.

¹⁰³ See 47 U.S.C. § 109(b)

to comply with CALEA irrespective of post-January 1, 1995 communications equipment, facilities, and service cost issues, carriers may complain that they cannot afford to comply with CALEA as a cost of doing business¹⁰⁴ and, as a result, may either delay compliance with CALEA or fail to comply with CALEA at all. In an effort to eliminate the issues of compliance costs as a basis for delayed compliance or non-compliance, Law Enforcement asks the Commission to exercise its authority under Section 229(a) of the Communications Act to establish rules that permit carriers to have the option to recover some or all of their CALEA implementation costs from their customers.¹⁰⁵

Section 107(b)(3) of CALEA requires that the Commission minimize the cost of CALEA compliance on residential ratepayers.¹⁰⁶ However, as the Commission itself recognized, permitting carriers to recover their CALEA implementation costs from customers will not burden residential ratepayers because “[t]o the extent that there are costs borne by the carriers and passed through to customers . . . it is likely that the costs

¹⁰⁴ It should be noted that this complaint appears to be generally limited to circuit-mode CALEA compliance. In the case of CALEA upgrades for packet-mode networks, carriers have generally not complained in their petitions for extension of time that the upgrades would be unduly expensive.

¹⁰⁵ Under this optional approach, a carrier will have the choice of absorbing all of its CALEA implementation costs as part of the cost of doing business, or recovering some or all of its CALEA implementation costs from its customers. Thus, it will be a carrier’s exclusive business decision whether, how, and how much of its CALEA implementation costs it chooses to recover from its customers.

¹⁰⁶ See 47 U.S.C. § 1006(b)(3)

would be shared by all ratepayers and, therefore, would be significantly diluted on an individual residential ratepayer basis.”¹⁰⁷ Thus, the costs of CALEA compliance for any particular ratepayer would be minimal.¹⁰⁸ In addition, carriers’ adherence to the CALEA implementation cost guidelines discussed in the *CALEA Second Report and Order* will ensure that carriers properly distinguish between the additional costs of CALEA compliance and the costs of general network upgrades, and that customers are not unfairly burdened with non-CALEA implementation costs.¹⁰⁹ For this additional reason, an optional carrier self-recovery mechanism appears all the more appropriate.

Permitting carriers to pass their CALEA implementation costs through to their customers is also consistent with the implementation cost recovery methodology authorized by the Commission in connection with the implementation of other statutory mandates. For example, the Commission permits carriers to recover the costs associated with local number portability implementation,¹¹⁰ E911 compliance,¹¹¹ and

¹⁰⁷ *CALEA Order on Remand* at 6919 ¶ 65

¹⁰⁸ *Id.* at 6919-20 ¶ 65.

¹⁰⁹ See *CALEA Second Report and Order* at 7129 ¶40 (“In our view, costs are related to CALEA compliance only if carriers can show that these costs would not have been incurred by the carrier but for the implementation of CALEA. For instance, costs incurred as an incidental consequence of CALEA compliance are not directly related to CALEA compliance and should be excluded from the carrier’s showing. Finally, general overhead costs cannot be allocated to CALEA compliance, only additional overheads incremental to and resulting from CALEA compliance.”).

¹¹⁰ See *In the Matter of Telephone Number Portability*, Third Report and Order, 13 FCC Rcd 11701, 11707 ¶¶ 9-10, 11773-74 ¶¶ 135-136 (1998) (permitting but not requiring rate-of-return and price-cap local exchange carriers to recover their carrier-specific costs

universal service fund contributions¹¹² Accordingly, the Commission should allow carriers to recover the costs associated with CALEA implementation and compliance through an end-user surcharge.¹¹³

C. The Commission Should Clarify The Costs That Can Be Included in Intercept Provisioning Costs and Who Bears Financial Responsibility For Such Costs

Notwithstanding that carriers are permitted under Title III of the OCCSSA to pass on to law enforcement their costs for provisioning court-authorized intercepts, a

directly related to providing long-term number portability through a federally tariffed, monthly number-portability charge assessed on end users for no longer than five years, and permitting carriers not subject to rate regulation (*e.g.*, competitive local exchange carriers, wireless carriers, and non-dominant long distance carriers) to recover their carrier-specific costs directly related to providing long-term number portability in any lawful manner).

¹¹¹ *In the Matter of Revision of the Commission's Rules to Ensure Compatibility With Enhanced 911 Emergency Calling Systems*, Second Memorandum Opinion and Order, 14 FCC Rcd 20,850, 20,867 ¶ 40, 20872 ¶ 54 (carriers may recover their E911 implementation costs through their own rates or through an explicit State-adopted mechanism)

¹¹² *In the Matter of Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 9211 ¶ 851 (1997) (carriers are permitted to pass through their universal service fund contribution requirements to all of their customers of interstate services).

¹¹³ The inclusion of any such end-user surcharge on customer bills would, of course, be subject to the "truth-in-billing" requirements established by the Commission. See CC Docket No. 98-170; 47 C.F.R. §§ 64.2400 *et seq.* Because the inclusion of any such end-user surcharge on customer bills is optional and at the sole discretion of the carrier, consistent with the Commission's truth-in-billing requirements, a carrier would not be permitted to describe any end-user surcharge applied by the carrier to recover its CALEA implementation and compliance costs as mandated by the Commission or the federal government (*e.g.*, the FBI). See *In The Matter of Truth-in-Billing and Billing Format*, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 7492, 7527 ¶ 56 (1999).

growing number of law enforcement agencies have increasingly expressed concern over the significant administrative costs in carriers' bills for intercept provisioning. The significant administrative intercept provisioning costs charged to law enforcement alone already make surveillance more difficult, especially for smaller law enforcement agencies. To permit carriers to include their CALEA implementation costs in their administrative intercept provisioning costs would not only violate Title III of the OCCSSA, but will also make it increasingly cost-prohibitive for law enforcement to conduct intercepts.

Although Title III of the OCCSSA provides for carriers to be compensated for their costs associated with provisioning a court-authorized intercept,¹¹⁴ nothing in either Title III or CALEA authorizes carriers to include in such provisioning costs their CALEA implementation costs. In the *CALEA Order On Remand*, however, the Commission seemed to suggest that carriers could recover "at least a portion of their CALEA software and hardware costs by charging to [law enforcement agencies], for each electronic surveillance order authorized by CALEA, a fee that includes recovery of capital costs, as well as recovery of the specific costs associated with each order."¹¹⁵ This statement by the Commission has unfortunately led some carriers to include their capital costs in the intercept provisioning fees.

¹¹⁴ See 18 U.S.C. § 2518(4).

¹¹⁵ *In the Matter of Communications Assistance for Law Enforcement Act*, Order on Remand, 17 FCC Rcd 6896, 6917 ¶ 60 (2002) ("CALEA Order on Remand").

Permitting carriers to pass their capital costs for CALEA compliance on to law enforcement as additional administrative charges pursuant to court orders for electronic surveillance or transactional records constitutes an improper shifting of the CALEA-allocated cost burden from industry to law enforcement not authorized or contemplated by CALEA. Moreover, the fact that Congress did not modify Section 2518(4) of Title 18 when it passed CALEA to permit CALEA implementation and compliance costs to be included in the carriers' intercept provisioning fees further demonstrates that CALEA implementation and compliance cost recovery was not intended to be linked to the other administrative costs associated with electronic surveillance services (namely, provisioning intercepts). Thus, the Commission lacked the authority to interpret, implement, or modify the cost recovery system under Title III prescribed by Congress. The Commission also lacked authority under CALEA to establish a cost recovery system that is inconsistent with the system established by Congress in Section 109 of CALEA. In any event, even if the Commission possessed the authority to establish a new cost recovery system, any new cost recovery system that was purportedly established by the Commission in the *CALEA Order on Remand* was not subject to notice and comment and therefore violated the Administrative Procedures Act. Accordingly, Law Enforcement asks the Commission to correct the suggestion made in the *CALEA Order on Remand* that carriers can pass their capital costs for CALEA compliance on to law enforcement in connection with provisioning intercept orders. In addition, Law

Enforcement asks the Commission to clarify by rule that carriers may not include costs expended to make modifications to equipment, facilities, or services pursuant to the capability requirements of CALEA in the formula used to establish fees charged to law enforcement for providing court ordered electronic surveillance and/or transactional records.

CONCLUSION

As discussed herein, lawfully-authorized electronic surveillance is an invaluable and necessary tool for federal, state, and local law enforcement in their fight to protect the American public against criminals, terrorists, and spies. Congress enacted CALEA to preserve law enforcement's ability to conduct lawful electronic surveillance despite changing telecommunications technologies by further defining the telecommunications industry's existing obligation to provision lawful electronic surveillance capabilities and requiring industry to develop and deploy CALEA intercept solutions.

Despite a clear statutory mandate, full CALEA implementation has not been achieved, and there remain a number of outstanding implementation issues. These outstanding implementation issues require immediate attention and resolution by the Commission, so that industry and law enforcement have clear guidance on the scope of CALEA's applicability. Accordingly, for all the foregoing reasons, the United States Department of Justice, the Federal Bureau of Investigation, and the Drug Enforcement Administration request that the Commission initiate an expedited rulemaking proceeding to:

- (1) formally identify the types of services and entities that are subject to CALEA,
- (2) formally identify the services that are considered "packet-mode services,"
- (3) initially issue a Declaratory Ruling or other formal Commission statement, and ultimately adopt final rules, finding that broadband access services and broadband telephony services are subject to CALEA;

- (4) reaffirm, consistent with the Commission's finding in the *CALEA Second Report and Order*, that push-to-talk "dispatch" service is subject to CALEA;
- (5) adopt rules that provide for the easy and rapid identification of future CALEA-covered services and entities;
- (6) establish benchmarks and deadlines for CALEA packet-mode compliance;
- (7) adopt rules that provide for the establishment of benchmarks and deadlines for CALEA compliance with future CALEA-covered technologies;
- (8) outline the criteria for extensions of any benchmarks and deadlines for compliance with future CALEA-covered technologies established by the Commission;
- (9) establish rules to permit it to request information regarding CALEA compliance generally;
- (10) establish procedures for enforcement action against entities that do not comply with their CALEA obligations,
- (11) confirm that carriers bear sole financial responsibility for CALEA implementation costs for post-January 1, 1995 communications equipment, facilities and services;
- (12) permit carriers to recover their CALEA implementation costs from their customers; and
- (13) clarify the cost methodology and financial responsibility associated with intercept provisioning

Dated: March 16, 2004

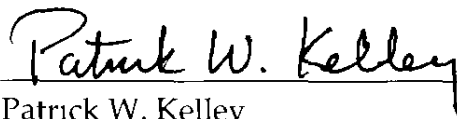
Respectfully submitted,
THE UNITED STATES DEPARTMENT OF JUSTICE

A handwritten signature in dark ink, appearing to read "John G. Malcolm", is written over a horizontal line.

John G. Malcolm
Deputy Assistant Attorney General,
Criminal Division

United States Department of Justice
950 Pennsylvania Avenue, N.W.
Suite 2113
Washington, D.C. 20530
(202) 616-3928

THE FEDERAL BUREAU OF INVESTIGATION



Patrick W. Kelley
Deputy General Counsel
Office of the General Counsel
Federal Bureau of Investigation
J Edgar Hoover Building
935 Pennsylvania Avenue, N W.
Room 7427
Washington, D.C. 20535
(202) 324-8067

THE DRUG ENFORCEMENT ADMINISTRATION

Michael J. Cunniff acting for

Robert T. Richardson
Deputy Chief Counsel
Office of Chief Counsel
Drug Enforcement Administration
Washington, D.C. 20537
(202) 307-8044

CERTIFICATE OF SERVICE

I hereby certify that on March 10, 2004, I caused a copy of the foregoing Joint Petition for Rulemaking to be hand delivered to each of the following:

Chairman Michael K. Powell
Federal Communications Commission
445 12th Street, S.W.
Room 8-B201
Washington, D C 20554

Commissioner Kathleen Q. Abernathy
Federal Communications Commission
445 12th Street, S.W.
Room 8-B115
Washington, D.C. 20554

Commissioner Michael J. Copps
Federal Communications Commission
445 12th Street, S.W.
Room 8-A302
Washington, D C. 20554

Commissioner Kevin J. Martin
Federal Communications Commission
445 12th Street, S.W.
Room 8-A204
Washington, D C 20554

Commissioner Jonathan S. Adelstein
Federal Communications Commission
445 12th Street, S.W.
Room 8-C302
Washington, D C 20554

John Rogovin, General Counsel
Federal Communications Commission
445 12th Street, S.W.
Room 8-C723
Washington, D.C. 20554

Ed Thomas, Chief
Office of Engineering and Technology
Federal Communications Commission
445 12th Street, S.W.
Room 7-C155
Washington, D C 20554

Julius Knapp, Deputy Chief
Office of Engineering and Technology
Federal Communications Commission
445 12th Street, S.W.
Room 7-C250
Washington, D.C. 20554

William Maher, Chief
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Room 5-C450
Washington, D.C. 20554

John Muleta, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Room 3-C252
Washington, D.C. 20554

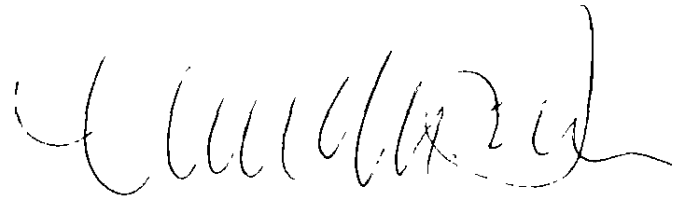
James Dailey, Director
Office of Homeland Security
Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W.
Room 7-C831
Washington, D.C. 20554

Geraldine Matise
Office of Engineering and Technology
Federal Communications Commission
445 12th Street, S.W.
Room 7-A260
Washington, D.C. 20554

John Spencer
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Room 3-A103
Washington, D.C. 20554

Tom Beers, Deputy Chief
Industry Analysis and Technology Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Room 6-A220
Washington, D.C. 20554

Jeffrey Carlisle, Sr. Deputy Bureau Chief
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Room 5-C356
Washington, D.C. 20554

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Valerie M. Furman